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# MULTIMEDIA UNIVERSITY

## FINAL EXAMINATION

TRIMESTER 3, 2016/2017

### UIB2612 – ISLAMIC BANKING AND FINANCE LAW (All Sections / Groups)

26<sup>th</sup> MAY 2017

Reading Time : 9.00 a.m. – 9.15 a.m.

(15 Minutes)

Answering Time: 9.15 a.m. – 12.15 p.m.

(3 Hours)

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#### INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.
2. This Question paper consists of 3 pages with 5 Questions only. Question 1 is compulsory.
3. Attempt **FOUR** out of **FIVE** questions. All questions carry equal marks and the distribution of the marks for each question is given.
4. Students are allowed to bring into Examination Hall CLEAN and ORIGINAL copy of:
  - i. Islamic Financial Services Act 2013 (Act 759) and
  - ii. Central Bank of Malaysia Act 2009
  - iii. Students are not allowed to lend or borrow statute(s) during the Examination.
5. Please write all your answers in the Answer Booklet provided.

**ANSWER ANY FOUR (4) OUT OF FIVE (5) QUESTIONS. QUESTION 1 IS COMPULSORY.**

**QUESTION 1 (Compulsory Question)**

The development of the Takaful Industry in Malaysia in the early 1980s was inspired by the prevailing needs of the Muslim public for a *Shariah*-compliant alternative to conventional insurance as well as to complement the operation of the Islamic bank that was established in 1983.

- (a) Explain the needs of implementing the *Takaful* to replace the Conventional Insurance. Elaborate how it operates. **(13 marks)**
- (b) Discuss the following concepts of *Takaful*:
- (i) *Takaful*
  - (ii) *Tabarru'*
  - (iii) *Mudharabah*
- (12 marks)**

**(Total: 25 marks)**

**QUESTION 2**

*"Similarly, the law applicable to Bai Bithaman Ajil contract is no different from the law applicable to loan given under the conventional banking. The law is the law of contract and the same principle should be applied in deciding these cases. Thus, if the contract is not vitiated by any vitiating factor recognised in law such as fraud, coercion, undue influence, etc. the court has a duty to defend, protect and uphold the sanctity of the contract entered into between the parties."*

-Judicial decision in Bank Islam Malaysia Bhd V Lim Kok Hoe & Anor And Other Appeals [2009] 6 CLJ 22

In light of the above, discuss the jurisdiction and development regarding attitude of the court in deciding Islamic Banking and Finance Law cases in Malaysia.

**(Total 25 marks)**

...continued

**QUESTION 3**

In a few decades, Islamic banking has become established as a niche industry across the world, offering new and sophisticated financial products designed to be compliant with Islamic legal principles and the common law.

Critically discuss the salient features of Islamic Banking which make it different from the conventional banks.

**(Total 25 marks)**

**QUESTION 4**

One of the most popular concepts applied in the Islamic Banking products is *Musharakah*. It is a concept based on partnership by way of profit and loss sharing, as oppose to debt- based form of financing.

- (a) Discuss in detail the concept of partnership (*Musharakah*) in Islam including its pillars and conditions.

**(18 marks)**

- (b) Explain how the concept of *Musharakah Mutanaqisah* is applied in the Islamic financing. Support your answer with an illustration of the situation.

**(7 marks)**

**(Total: 25 marks)**

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**QUESTION 5**

Before the coming into force of the Central Bank Act 2009 (“CBA 2009”), the *Shariah* Advisory Council (“SAC”) is considered as one of the authoritative bodies with the expertise and competency to provide ruling on Islamic finance issues. However, the legislature had taken step to rectify the above situations by passing the CBA 2009 and it is done by granting the authority to the Central Bank of Malaysia for the establishment of the SAC as the highest and sole authority to be referred by the civil courts in dealing with Islamic banking and finance cases in Malaysia.

Discuss the above statement in the explaining the roles and functions of the *Shariah* Advisory Council. Support your answer with relevant provisions and case laws.

**(Total 25 marks)**

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